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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/737,344	12/15/2003	Markus Baumann	RD8025USDIV	7559

23906 7590 08/10/2004

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LEGAL PATENT RECORDS CENTER
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EXAMINER	
JUSKA, CHERYL ANN	
ART UNIT	**PAPER NUMBER**
1771	

DATE MAILED: 08/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/737,344	BAUMANN ET AL.	
	Examiner	Art Unit	
	Cheryl Juska	1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *01 June 1804*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-11* is/are pending in the application.

4a) Of the above claim(s) *3-9* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,2,10 and 11* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *05 December 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☒ Certified copies of the priority documents have been received in Application No. 10/038,404.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *12/15/03*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Group I, claims 1 and 2, in the paper filed June 18, 2004, is acknowledged. Thus, claims 3-9 are withdrawn as non-elected. New claims 11 and 12 will be examined along with claim 1.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 1, 2, 11, and 12 are rejected under 35 USC 103(a) as being unpatentable over US 4,043,749 issued to Huffman and/or US 5,131,918 issued to Kelley in view of US 5,681,620 issued to Elgarhy.

Applicant claims a textile article produced by a particular process. The resulting article has a textile surface comprising acid dyed nylon yarns and cationic dyed nylon yarns and a stainblocker thereon. The article is preferably a carpet tile and has a specified stain resistance.

Huffman and Kelley both carpets comprising acid dyeable nylon yarns and cationic (basic) dyeable nylon yarns that are cross-dyed with both an acid dye and a basic dye, thereby obtaining an aesthetically pleasing multi-colored carpet. See Kelley, abstract, col. 1, lines 39-58,

col. 2, lines 18-24 and 28-47, and col. 9, lines 2-4 and 16-18 and Huffman, abstract, col. 1, lines 43-48, col. 1, line 60-col. 1, line 2, and col. 3, line 51-col. 4, line 6.

Huffman and Kelley fail to teach the addition of a stainblocker to the nylon carpet. However, the use of stainblockers on nylon carpets are well known in the art, in particular on acid dyeable nylon carpets. For example, Elgarhy teaches treating nylon 6 or nylon 6,6 (i.e., acid dyeable nylon) carpets with a stainblocker (abstract, col. 11, lines 40-49, and claims 1 and 3).

Thus, it would have been obvious to one skilled in the art to employ a stainblocker on the carpets of Huffman and/or Kelley in order to prevent staining of the acid dyeable nylon yarns. Note that although the basic dyeable nylon yarns are inherently stain resistant to acid stains, the acid dyeable nylon yarns would still require a stainblocker as is common in the art of commercial carpets. Hence, one would treat the entire carpet with said stainblocker rather than attempting to dye and treat only the acid dyeable yarns before forming the carpet.

With respect to the recited stain resistance properties, it is asserted that the carpets of Huffman and/or Kelley when modified according to the Elgarhy reference would have said properties. Specifically, chemically and structurally alike products cannot have mutually exclusive properties.

With respect to the process limitations of making the carpet, it is noted that said limitations are not given patentable weight at this time. It is the examiner's position that the prior art product is identical or only slightly different than the presently claimed product prepared by the method presently claimed, because both comprise a carpet having acid dyed yarns and cationic dyed yarns with a stainblocker thereon. Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the

product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or an obvious variant from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 964. The burden has been shifted to the applicant to show unobvious differences between the claimed product and the prior art product. *In re Marosi,* 218 USPQ 289. Therefore, claims 1, 2, 10, and 11 are rejected as being obvious over the cited prior art.

Conclusion

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

5. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

cj
August 8, 2004

CHERYL A. JUSKA
PRIMARY EXAMINER